HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 6787 of 1997

DATED: 21-03-2007

Between:

The A.P.S.R.T.C, represented by its
Deputy Manager (T), Jubilee Bus Station,
Picket, Secunderabad.

…Petitioner

and

The Authority Under Payment of Wages Act &
Asst. Commissioner of Labour, Hyderabad-I,
Karmika Bhavan, RTC X Roads,
Hyderabad and others

…Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 6787 of 1997

ORAL ORDER:

Heard the learned counsel for the petitioner and Sri A.K. Jayaprakash Rao, the learned counsel for respondents 2 to 24.

This writ petition is directed against the order dated 20-1-1997 of the 1st respondent in P.W.Case No. 4 of 1995. The party respondents filed the application before the 1st respondent, an authority under the Payment of Wages Act, 1936 (for short 'the Act') and the Assistant Commissioner of Labour, Hyderabad claiming difference of wages to a tune of Rs.2,59,928-75 Ps under Section 15 (3) of the Act. The amount claimed is towards difference in the actual wages paid to them for the period from 7-7-1992 to 31-12-1994 and 1-1-1995 to 31-7-1995 as against the wages due and payable to them as per Government Orders. In addition, they claimed compensation under Section 15 (3) of the Act.

Before the 1st respondent authority, the writ petitioner resisted the application of the party respondents herein seeking condonation of delay in preferring the claim under the provisions of the Act. The 2nd respondent before the Authority was a contractor who had engaged the respondents 2 to 24 to work in the writ petitioner's corporation. In its pleadings before the Authority, the writ petitioner asserted that there was a service contract entered into between the petitioner and the contractor to maintain the Jubilee Bus Station, Secunderabad and the petitioner is not responsible for payment of wages to the workers.

The authority considered the oral testimony of P.Ws.1 and 2 who testified to having worked as Sweepers for over 7 years and having been paid wages of Rs.19-25 Ps. per day during the period from 1-7-1992 to 31-12-1994 and Rs.22/- per day from 1-1-1995 till the date of their deposition. PW1 also asserted the entitlement of wages as per the orders of the Government issued by the Commissioner of Labour and testified that respondents 1 and 2 before the authority i.e., the petitioner and the contractor had paid lesser amounts than the wages due and payable to them. PW1 testified similarly to having worked for the last 12 years under the petitioner and under various contractors including the contractor impleaded as the 2nd respondent before the authority and to having been paid lesser wages than the wages due and payable under the Government orders.

On behalf of the petitioner, the Depot Manager of the Jubilee Bus Station, Secunderabad was examined as RW1 who testified that the contractor was engaged on a monthly remuneration of Rs.8,950/- which was subsequently revised to Rs.8,999/- from 28-2-1994. This witness, on behalf of the writ petitioner, disclaimed any responsibility for payment of wages to the party respondents herein. On behalf the writ petitioner, Exs.B1 and B2, being the licence copy obtained under the Contract Labour Act in favour of the contractor in question and the agreement copy between the writ petitioner and the contractor, were also marked. In cross-examination, RW1 admitted that the writ petitioner is the principal employer under the Contract Labour Act and it is its duty to ensure compliance of all statutory provisions under the Contract Labour Act. He also asserted that he was also aware of the wages declared for contract workers from time to time but contended that it is only the contractor who is liable to pay the wages.

On a consideration of the oral and documentary evidence, the Authority rightly came to the conclusion that the principal employer i.e., the writ petitioner was duty bound to ensure payment of the statutorily

fixed minimum wages to all the workmen who are working under it either directly or through a contractor. The Authority rightly observed that as a public sector undertaking, the writ petitioner, was obligated to ensure compliance of statutory provisions by the contractors engaged by it. On the basis of such reasoning, the Authority determined that the writ petitioner as the principal employer was liable for payment of the statutorily fixed minimum wages to the workmen but had failed to do so and is therefore liable to pay an amount of Rs.2,59,928-75 Ps. As the writ petitioner had grossly failed to ensure payment of the statutorily fixed minimum wages to the party respondents herein contrary to its obligations under the provisions of the Act, the Authority also directed the writ petitioner to pay compensation of Rs.10,39,715/- being four times of the amount claimed. Thus, in all, the authority directed the petitioner to pay Rs.12,99,643-75 Ps.

Sri V.T.M.Prasad, the learned counsel for the writ petitioner raised a singular contention that no plausible reasons were recorded by the authority for condonation of the delay of 1089 days in preferring the claim before the authority. He also advanced an argument that the writ petitioner is not liable to pay the wages and it is only the contractor's liability. This contention does not commend acceptance.

Section 15 of the Act sets out the provisions *inter alia* for adjudication of claims to be preferred under the provisions of the Act. Section 15 (2) of the Act reads as under:

> "Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3)"

The first proviso to Section 15 (2) of the Act enjoins that every

such application shall be presented within twelve months from the date on which the deduction from the wages was made or from date on which the payment of the wages was due to be made, as the case may be. The further proviso enables that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. Section 15 (3) of the Act enables the authority, after a due process of hearing, to direct the refund to the employed person, of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty five rupees in the latter. The proviso to Section 15 (3) of the Act enjoins that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person or the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, despite exercising reasonable diligence, to make prompt payment.

In the case on hand, no *bona fide* error or *bona fide* dispute, the occurrence of an emergency or the existence of exceptional circumstances, is discernable. In so far as the question of acceptance of a delayed claim is concerned, it must be observed that the Authority was obligated to record reasons for entertaining a claim beyond the stipulated period. The satisfaction as to the existence of a sufficient cause for delayed institution of an application is the foundation for the exercise of jurisdiction by the Authority. However, the respondents 2 to 24 are not responsible for the incompetence and negligence of the 1st respondent-Authority in recording reasons. All these respondents are low paid employees who are employed as Sweepers and in like categories. Interference with the order impugned, in respect of such

employees, on account of the negligence or error of the 1st respondent is inequitable. The socio-economic condition of the respondents 2 to 24 is *Res ipsa loquitur* a discernible justification for the delayed institution of their application and constitutes sufficient cause for not making an application within time. On the analysis above, this Court is not inclined to invalidate the order impugned, on the ground that the Authority has failed to record sufficient and plausible reasons for being satisfied as to the reasonableness of the delayed application by the respondents 2 to 24.

In so far as the petitioner's claim on merits is concerned, the petitioner does not make out any case for interference. The petitioner is an instrumentality of the State and also the principal employer and as such is obligated to ensure compliance of all statutory requirements by the contractor engaged by it for supply of labour to the petitioner. The petitioner has failed in its obligation to ensure regular and focused supervision of the compliance by the contractor of the statutory requirements including the obligation to pay wages according to the minimum wages prescribed. The petitioner cannot escape from its primary liability on the ground that it is not the direct employer. The liability of the petitioner to pay wages/differences in wages to the respondents 2 to 24 is not in dispute. The order of the Authority in determining the petitioner's liability to pay the difference of wages therefore, suffers from no infirmity warranting interference.

Then the question that remains for consideration is what is the appropriate measure of compensation to be imposed on the petitioner? Guidance on the exercise of discretion in determining the compensation is available in a decision of the Supreme Court reported in ***Pherna Sahygo v. Authority under Minimum Wages Act***[1] wherein the Authority had directed payment of difference of wages to workmen at Rs.2,550/- and had awarded Rs.20,400/- towards compensation. The employer unsuccessfully moved the High Court of Punjab and Haryana. In appeal, the Supreme Court declined to

interfere with the award of the Authority in so far as the Authority had directed payment of the difference of wages. In so far as the compensation is concerned, the Supreme Court found that the amount of compensation awarded by the Authority was exorbitant. The Supreme Court observed that equity and justice require that the amount of compensation be equivalent to the amount of wages, namely, the workers shall get as compensation an amount equal to the amount of wages awarded. The order of the Authority dated 30-12-1997 was modified to that extent and the appeal allowed.

Following the precedent, this Court is of the considered view that the compensation equivalent to the amount of wages due and liable by the petitioner to the respondents 2 to 24 must be just and proper and the compensation of four times the wages, as determined by the authority, is unsustainable.

Accordingly, the writ petition is allowed. The order of the 1st respondent-authority dated 20-1-1997 in PW Case No. 4 of 1995 is modified and consequently the writ petitioner shall be liable to the respondents in an amount of Rs.2,59,928-75 Ps. plus compensation equivalent to the amount of wages i.e.,
Rs.2,59,928-75 Ps. (total amount of Rs.5,19,853-50 Ps.). This amount shall be paid by the petitioner to the respondents 2 to 24 within thirty days from today. No order as to costs.

GODA RAGHURAM, J

21-03-2007
Issue copy in three days
/B.O/
GRR

[1] (2001) 9 SCC 247